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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,913	11/30/2006	Nicolas Bara	BDM-06-1202	1435

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IP GROUP OF DLA PIPER LLP (US)  
ONE LIBERTY PLACE  
1650 MARKET ST, SUITE 4900  
PHILADELPHIA, PA 19103

EXAMINER
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WRIGHT, MADISON L

ART UNIT	PAPER NUMBER
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3781

NOTIFICATION DATE	DELIVERY MODE
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06/29/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pto.phil@dlapiper.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/585,913	BARA, NICOLAS	
	<b>Examiner</b>	<b>Art Unit</b>	
	Madison L. Wright	3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 1-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 July 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/13/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 16-32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Examiner does not know what the applicant means by access to contents of the apparatus brings about a physical transformation. The Examiner does not know what is physically changed. The Examiner does not know what comprises a plug, it is either the apparatus or the container. The Examiner does not know if the connecting means is connected to the container or the plug or the apparatus. The applicant is informed that the container is not claimed.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 16, 17, 21, 22, 27, and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 16 recites the limitations "the naked eye" and "the container" in line 4 of claim 16. There is insufficient antecedent basis for this limitation in the claim. Also, it is

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unclear as to what is meant by "can be ascertained by the naked eye of the container and not of the plug" in line 4 of claim 16. The container does not have an eye that can see and neither does the plug.

6. Claim 17 recites the limitation "the user" in line 2 of claim 17. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 21 recites the limitation "the container" in line 2 of claim 21. There is insufficient antecedent basis for this limitation in the claim.

8. Claim 22 recites the limitation "the container" in line 1 of claim 22. There is insufficient antecedent basis for this limitation in the claim.

9. Claim 27 recites the limitation "the tongue" in line 1 of claim 27. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 32 recites the limitations "the naked eye" and "the container" in line 4 of claim 32. There is insufficient antecedent basis for this limitation in the claim.

11. The term "the naked eye" in claim 16 and 32 is a relative term which renders the claim indefinite. The term "the naked eye" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The "naked eye" of a person that wears glasses is different than the "naked eye" of a person that does not wear glasses.

The remainder of the office action is considered as best understood. The Examiner is viewing that the claims are drawn to an apparatus only so any other

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structure is not given patentable weight because the claims are only drawn to the subcombination.

***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 16-26 and 28-32 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,794,098 to Versen ("Versen").

As to claim 16, Versen teaches an apparatus that comprises a plug (cap member 42) and at least one connecting means (skirt portion 46).

As to claim 17, Versen teaches the apparatus according to claim 16, wherein the plug (cap member 42) and container can be interlocked at any moment at the will of the user.

As to claim 18, Versen teaches the apparatus according to claim 16, wherein the connecting means is integral with the apparatus (Fig. 5).

As to claim 19, Versen teaches the apparatus according to claim 16, wherein the connecting means is a divisible clamp (seal member 12).

As to claim 20, Versen teaches the apparatus according to claim 16, wherein the physical transformation is a rupture or tear of the connecting means (Fig. 5).

As to claim 22, Versen teaches the apparatus according to claim 16, wherein the apparatus and the container are made of different materials (col. 3, lines 29-31).

As to claim 25, Versen teaches the apparatus according to claim 16, wherein the connecting means is a tongue (seal member 12) that can be integrated in a definitive and non-replaceable manner with the apparatus and the plug.

As to claim 26, Versen teaches the apparatus according to claim 25, wherein integration of the tongue is carried out with an adhesive band (adhesive 20) that can not be violated by tearing.

As to claim 32, Versen teaches an apparatus that comprises at least one connector (skirt portion 46).

As for claims 21, 23, 24 and 28-31, the structure of the reference meets the claimed structural limitations so the apparatus is capable of meeting the functional limitations of the claimed invention.

### ***Conclusion***

14. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the

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requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- U.S. Patent No. 5,605,230 to Marino, Jr. et al. discloses a sealed label that is made of different materials and allows reading of the identification.
- U.S. Patent No. 5,257,704 to Gutt discloses a seal that is a different material than the container and allows reading of the identification.
- U.S. Patent No. 1,162,615 to Keislar discloses a covering for a bottle and an apparatus to keep the cover in a closed position.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Madison L. Wright whose telephone number is 571-270-7427. The examiner can normally be reached on Monday thru Friday, 8:00 to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony D Stashick/  
Supervisory Patent Examiner, Art  
Unit 3781

/M. L. W./  
Examiner, Art Unit 3781